

# Congress of the United States

Washington, DC 20510

March 17, 2022

Attorney General Merrick Garland  
Office of the Attorney General  
U.S. Department of Justice  
950 Pennsylvania Ave. NW  
Washington DC 20530

Dear Attorney General Garland:

Last month, it was reported that the San Francisco District Attorney's Office learned that local police in San Francisco are using DNA samples collected from sexual assault victims to identify them as potential suspects in other crimes.<sup>1</sup> We are writing to request that the Department of Justice ("the Department") issue guidance on this practice, which was made possible, in part, because laboratories keep DNA stored in a local database.

Sexual assault is an all-too-common occurrence. According to statistics compiled by the Rape, Abuse & Incest National Network (RAINN), every 68 seconds, an American is sexually assaulted, and every nine minutes, that victim is a child. Meanwhile, only 25 out of every 1,000 perpetrators will end up in prison.<sup>2</sup>

For those that choose to do so, victims can provide DNA evidence for a rape kit, which can be used to identify offenders. The importance of DNA evidence in sexual assault cases cannot be overstated. Not only does DNA evidence increase the likelihood of identifying the perpetrator and carry weight in court to hold perpetrators accountable, but it also prevents future sexual assaults from occurring by taking perpetrators off the streets.

We were concerned to learn that San Francisco police used DNA samples collected from rape kits to identify sexual assault victims as possible suspects in other crimes. We worry that this practice will and has already discouraged sexual assault victims from providing rape kits in the future, thereby leaving thousands of victims without any measure of justice. This practice is bad for survivors who report, bad for survivors who are considering reporting, and bad for law enforcement responsible for arresting and prosecuting rapists.

In addition, survivors who undergo rape kit exams have only consented to the collection of their DNA for the purpose of catching the person who raped them, and therefore, not only is the misuse of this data unseemly, but also likely inadmissible in court.

It is our understanding that the reason this incident occurred is because labs keep databases of DNA as a backup in case of contamination. In other words, this was, in part, a measure of quality

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<sup>1</sup> Maanvi Singh, *San Francisco DA Drops Charges Against Woman Whose Rape Kit DNA Linked Her to a Property Crime*, The Guardian (Feb. 16, 2022), <https://www.theguardian.com/us-news/2022/feb/16/chesa-boudin-san-francisco-da-drops-charges-rape-kit-dna>.

<sup>2</sup> *Statistics*, RAINN (accessed March 17, 2022), <https://www.rainn.org/statistics>.

control. However, there is no reason that these samples should then be matched to DNA evidence collected from other crime scenes.

While federal regulations for the Combined DNA Index System (CODIS) prohibit labs from uploading victim samples into state and national databases, this is not the case with local jurisdictions. Therefore, we encourage the Department to issue guidance on the issue as soon as possible.

The Department regularly issues guidance to and collects data from city, university, and college, county, state, tribal, and federal law enforcement. It is our belief that the Department should make it clear that it is unacceptable for the DNA samples of sexual assault victims to be used to identify these individuals as potential subjects in other crimes.

The Department is tasked with providing “federal leadership in developing the national capacity to reduce violence against women and administer justice for and strengthen services to victims of domestic violence, dating violence, sexual assault, and stalking.”<sup>3</sup> Therefore, we respectfully request that you provide leadership on whether DNA samples of victims can be used to implicate such individuals for potential connection to other crimes.

We appreciate the opportunity to work with the Department on this vital issue. Thank you for your attention to this matter.

Sincerely,



Carolyn B. Maloney



Shontel M. Brown



Ann Wagner

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<sup>3</sup> *Office on Violence Against Women*, The U.S. Department of Justice (accessed March 17, 2022), <https://www.justice.gov/ovw>.